KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL v. LAM KUN TAI

HIGH COURT MALAYA, KUALA LUMPUR
SU GEOK YIAM J
[CIVIL APPEAL NO: WA-16-20-10-2016]
31 OCTOBER 2018

LABOUR LAW: *Social security – Survivors' pension – Claim by widow of deceased – Marriage solemnised by way of Chinese customary marriage – Marriage never registered under Law Reform (Marriage and Divorce) Act 1976 ('LRA') – Whether widow fell within category of 'dependant' under s. 2(3) of Employees' Social Security Act 1969 ('ESSA') – Whether word 'dependant' in s. 2(3) of ESSA includes widow of deceased insured person – Whether must prove valid marriage solemnised and registered under LRA – Whether s. 2(3) of ESSA refers to 'widow or widower and not 'lawful widow' or 'lawful widower' of deceased – Whether widow entitled to be paid survivors' pension*

Prior to the death of the deceased in 2015, the respondent had entered into a Chinese customary marriage with the deceased in 1991 and a marriage ceremony at the deceased's grandmother's house. It was an undisputed fact that the respondent's marriage to the deceased was a valid customary marriage and lasted for 24 years. However, the marriage was never registered under the Law Reform (Marriage and Divorce) Act 1976 ('LRA'). The marriage ended due to the demise of the deceased. Following the death of the deceased, the respondent and the children of the deceased made a claim to the Director General of the Social Security Organisation ('DG of SOCSO') for a survivor's pension under s. 20A of the Employees' Social Security Act 1969 ('ESSA'). Upon considering the merits of the claim, the DG of SOCSO approved the claim of the deceased's children and payment of survivors' pension were continuously being made to them until they attain the age of 21 years. The DG of SOCSO, however, elected not to pay a survivors' pension to the respondent on the ground that she was not a lawful 'widow' of the deceased under s. 2(3) of the ESSA so as to entitle her to a survivors' pension on the ground that her marriage to the deceased was never registered under the LRA. Dissatisfied, the respondent filed an appeal to the Employees' Social Security Appellate Board ('SSAB') and the appeal was allowed. The SSAB held, *inter alia*, that the respondent fell within the category of 'dependant' being the widow of the deceased under s. 2(3) of the ESSA even though her marriage to the deceased was never registered under the LRA and therefore, she was entitled to survivors' pension. Hence the appeal wherein the sole issue for determination by the court was whether the respondent, not having her marriage to the deceased registered under the LRA, could be categorised as a 'widow' under s. 2(3) of the ESSA so as to entitle her to be paid a survivors' pension.

Held (dismissing appeal with costs):

(1) The law concerning survivors' pension is the ESSA. The ESSA is a piece of social legislation enacted by Parliament with the object of providing social security in certain contingencies and to make provisions for certain other matters in relation thereto including looking after the welfare of the dependants of a deceased insured person. Based on the definition of the word 'dependant' in s. 2(3) of the ESSA, it is clear that a dependant includes the widow of the deceased insured person being a relative of a deceased insured person. The word 'widow' in s. 2(3) of ESSA ought to be interpreted literally and purposively in order to serve justice to the insured person in order to enable his relatives who are specified under the section to obtain the survivors' pension benefit conferred under the ESSA in the event of his demise. (paras 31, 37 & 48)

(2) There is no requirement for the respondent to prove that her marriage to the deceased before his demise was a valid marriage solemnised and registered under the LRA. Section 2(3) of the ESSA does not refer to a 'lawful widow' or a 'lawful widower' of a deceased insured person and hence, there is no justification or the court to insert the word 'lawful' in front of the words 'widow or widower' in that section. Therefore, as long as a claimant under the ESSA can prove that he or she is a widow or a widower or a child of a deceased insured person, the claimant is a 'dependant' within the meaning of that section. (paras 43 & 44)

(3) The validity of the respondent's customary marriage to the deceased was not disputed and the fact of the demise of the deceased was also no disputed. By virtue of the respondent's valid customary marriage to the deceased and based on the ordinary meanings of the words 'wife' and 'widow', the respondent was, undoubtedly, the wife of the deceased prior to his demise and the 'widow' of the deceased after the demise of the deceased. Therefore, the respondent had proven that she was a widow and it sufficed for her claim to be allowed by the DG of SOCSO. (paras 42 & 45)

(4) Sections 5(4), 22(4) and 27 of the LRA only define 'marriages' and the solemnisation and registration of such marriages under the LRA. Since there is no provision or definition in the LRA which deals specifically with 'widow' or 'widower', it would be unjust for the court to rely on the LRA to interpret the words 'widow' or 'widower' in the ESSA to mean 'lawful widow or widower' under the LRA. The appellant's interpretation of the word 'widow' to mean 'lawful widower' was contrary to the object of the ESSA. (paras 52-54)

(5) The real issue before the court was whether the respondent was a 'widow' under s. 2(3) of the ESSA so as to entitle her to a survivors' pension instead of the issue whether the respondent was the lawful wife of the deceased insured person under the LRA so as to deprive her of

the benefit of a survivor's pension upon his demise. It followed that the claimant's rights under the ESSA ought to be determined under the ESSA and not under the LRA. Therefore, the SSAB did not commit any error of law and/or fact which warranted the intervention of this court to set aside its decision allowing the respondent's claim under the ESSA for a 'survivor's pension'. (paras 64, 65 & 72)

Case(s) referred to:
Chai Siew Yin v. Leong Wee Shing [2004] 1 CLJ 752 CA ***(dist)***
Joremi Kimin & Anor v. Tan Sai Hong [2001] 1 CLJ 526 CA ***(refd)***
Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara [2008] 9 CLJ 428 HC ***(refd)***
Koi Lean Hua v. Ketua Pengarah Pertubuhan Keselamatan Sosial [2011] 1 LNS 878 HC ***(not foll)***
Tan Siew Sen & Ors v. Nick Abu Dusuki Hj Abu Hassan & Anor [2016] 6 CLJ 18 CA ***(dist)***

Legislation referred to:
Employees' Social Security Act 1969, ss. 2(3), 15(g), 20A
Law Reform (Marriage and Divorce) Act 1976, ss. 5(4), 22(4), 27, 34

For the appellant - Diba Natalia Ishak; M/s Skrine
For the respondent - Manimagalai Gowindasamy; M/s Manimagalai Gowin & Partners

Reported by S Barathi

JUDGMENT
(encl. 1)

Su Geok Yiam J:

[1] This is an appeal by the appellant, the Director General of the Social Security Organization ("the DG of SOCSO") in English or the Ketua Pengarah of the Pertubuhan Keselamatan Sosial ("PERKESO") in Malay, against the decision of the Chairman of the Employees' Social Security Appellate Board ("the SSAB").

[2] The SSAB decided that the respondent is entitled to a survivors' pension on the ground that the respondent falls within the category of 'dependant' under s. 2(3) of the Employees' Social Security Act 1969 ("the ESSA 1969") (Act 4) being the widow of the deceased insured person ("the deceased") (see exhibit at p. 4 of the record of appeal ("ROA").

Factual Background

[3] I shall set out the factual background of the appellant's appeal.

[4] Prior to the death of the deceased on 16 November 2015, the respondent had entered into a Chinese customary marriage with the deceased in 1991 at the Kowchow Sin Thye Foo Temple in Kepong.

[5] The respondent gave evidence that she and the deceased also underwent a marriage ceremony at the deceased's grandmother's house in Sekinchan, Selangor.

[6] Photographs of the marriage ceremony were exhibited as evidence (see exhibits at pp. 26-27 of the ROA).

[7] The respondent's evidence was further corroborated by a statutory declaration signed by one of the temple committee members, namely, Mr Chay Yee Yau @ Chay Yee Yam (see exhibit at p. 28 of the ROA).

[8] The respondent's evidence was also further corroborated by the confirmation letter of the head of the village at Sekinchan, Selangor, Mr Low Yit Keat (see exhibit at p. 29 of the ROA).

[9] It is an undisputed fact that the respondent's marriage to the deceased was a valid customary marriage and it lasted for 24 years ("the respondent's marriage").

[10] The respondent's marriage only ended due to the deceased's demise on 16 November 2015.

[11] It is an undisputed fact that the marriage was never registered under the Law Reform (Marriage and Divorce) Act 1976 (Act 164) ("the LRA").

[12] As a result of the marriage, the respondent gave birth to four children ("the deceased's children").

[13] The details of the deceased's children are as follows:

(i) Leow Chee Kiong, 950619-14-6265, son, 21 years;

(ii) Leow Yee Lem, 961010-56-5164, daughter, 20+ years;

(iii) Leow Pui Lim, 000107-14-1242, daughter, 17 years; and

(iv) Leow Kai Ling, 020513-14-1318, daughter, 14+ years.

(See exhibits at pp. 18 - 25 of the ROA).

[14] The eldest son who has already attained 21 years old is a disabled child and he depends on his mother, the respondent, to maintain and support him.

[15] Following the death of the deceased on 16 November 2015 from 'post stemi with large intracranial bleed', the respondent and the deceased's children made a claim to the DG of SOCSO or the Pertubuhan Keselamatan Sosial ("PERKESO") in Malay for a survivors' pension under s. 20A of the ESSA 1969 ("the claim").

[16] Upon considering the merits of the claim, the DG of SOCSO approved the claim of the deceased's children and payments of survivors' pension were and are continuously being made to them until they attain the age of 21 years.

[17] The DG of SOCSO, however, elected not to pay a survivors' pension to the respondent on the ground that she is not a lawful 'widow' of the deceased under s. 2(3) of the ESSA 1969 so as to entitle her to a survivors' pension on the ground that her marriage to the deceased was never registered under the LRA.

Respondent's Appeal To Social Security Appellate Board ("The SSAB")

[18] Dissatisfied with the rejection of her claim by the DG of SOCSO, the respondent filed an appeal to the SSAB ("the respondent's appeal")

[19] On 16 August 2016, the SSAB allowed the respondent's appeal.

[20] The SSAB held, *inter alia*, that the respondent falls within the category of 'dependant' being the widow of the deceased under s. 2(3) of the ESSA 1969 even though her marriage to the deceased was never registered under the LRA and that, therefore, she is entitled to a survivors' pension ("the decision of the SSAB").

[21] In allowing the respondent's appeal, the SSAB relied on two Court of Appeal cases, which are *Joremi Kimin & Anor v. Tan Sai Hong* [2001] 1 CLJ 526; [2001] 1 MLJ 268 and *Chai Siew Yin v. Leong Wee Shing* [2004] 1 CLJ 752 ("the two Court of Appeal decisions").

[22] Dissatisfied with the decision of the SSAB in allowing the respondent's appeal, the appellant filed this appeal to the Kuala Lumpur High Court.

Issue For Determination By Court

[23] In my view, there is only one issue for the determination by this court in this appeal. It is as follows:

(i) Whether the respondent not having her marriage to the deceased registered under the LRA, can be categorised as a "widow" under s. 2(3) of the ESSA 1969 so as to entitle her to be paid a survivors' pension?

Appellant's Submissions Before This Court

[24] Before this court, Miss Diba Natalia binti Ishak ("Miss Natalia"), learned counsel for the appellant, submitted that the appeal has merits and ought to be allowed based on the following reasons:

(i) The word "widow" in s. 2(3) of the ESSA 1969 must be construed as "lawful widow";

(ii) Since the respondent's marriage to the deceased was not registered under the LRA, the respondent is not the lawful widow of the deceased;

(iii) The SSAB erred in following the two Court of Appeal decisions and in coming to its decision that the respondent is a lawful widow despite the non-registration of her marriage under the LRA;

(iv) The two Court of Appeal decisions took the position that so long as the marriage contracted by the parties is valid according to the ceremonial rites of the community to which they belonged, non-registration of the marriage under the LRA would not render the marriage invalid following the definition of 'married woman' under the Married Women Act 1957 (Act 450) ("the MWA") and the saving provision of s. 34 of the LRA which provides that:

> Nothing in this Act of the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid by reason of its having been or not having been registered.

(v) However, the two Court of Appeal decisions have been overruled by the Federal Court when the Federal Court reversed the decision of the Court of Appeal in *Chai Siew Yin v. Leng Wee Shing ("Chai Siew Yin")* [2004] 1 CLJ 152 in the Federal Court Civil Appeal No. 2-10-2003(W);

(vi) The oral judgment of the Federal Court in the Federal Court Civil Appeal No. 2-10-2003(W) has been cited in the recent Court of Appeal case of *Tan Siew Sen & Ors v. Nick Abu Dusuki Hj Abu Hassan & Anor ("Tan Siew Sen")* [2016] 6 CLJ 18; [2016] MLJU 215 where the Court of Appeal held as follows:

> [27] We pause here to note that up to that point, *Joremi Kimin* and *Chai Siew Yin* represented the position of the law on section 34 of the LRA read in conjunction with section 7(2) of the CLA. The law as it stood then was that so long as the marriage contracted by the parties was valid according to the ceremonial rites of the community to which they belonged, non-registration did not render the marriage invalid.
>
> [28] The authoritative force of these two decisions was however nullified when the Federal Court reversed *Chai Siew Yin* in Civil Appeal No. 2-10-2003(W). In a brief unreported oral judgment delivered by Pajan Singh Gill FCJ on 29 January 2004, this is what the Federal Court decided:
>
> Having heard the detailed arguments and having considered the relevant provisions of the Law Reform (Marriage and Divorce) Act 1976 and in the circumstances of this case, we are unanimous in our decision that this appeal be allowed.
>
> We are not in agreement with the reasoning of the judgments both in the High Court and the Court of Appeal.
>
> Section 34 of the said Act should not be read in isolation, but in harmony with the other provisions of the Act which encapsulate the overall intention of the Legislature in enacting the Act. To do otherwise would defeat the purpose and

> intention of the Act which was enacted to 'provide for monogamous marriages and the solemnisation and registration of such marriages'.
>
> …
>
> [36] As only a validly solemnised marriage will make a woman a wife, an invalid marriage will not. *Joremi Kimin* and *Chai Siew Yin* are no longer good law for the proposition section 34 of the LRA validates any unregistered customary marriage that is solemnised after the coming into force of the LRA.
>
> …
>
> [48] This is where, with the greatest of respect, we think Gopal Sri Ram JCA fell into error when he said in *Chai Siew Yin* (see paragraph 26 above) that "nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the ceremonial rites of the community to which they belong." Contrary to what the learned judge said, the effect of sections 5(4) and 22(4) of the LRA is that such customary marriage, being solemnised after the appointed date, will be void for want of registration.

(vii) Hence, the SSAB erred in law and/or fact in relying on the authoritative force of the two Court of Appeal decisions as they have been nullified when the Federal Court reversed the decision of the Court of Appeal in *Chai Siew Yin* in the Federal Court Civil Appeal No. 2-10-2003(W);

(viii) In *Tan Siew Sen*, the question for the consideration of the Court of Appeal was whether the third appellant, having failed to register her marriage with the deceased, can be considered as the lawful wife of the deceased so as to entitle her to make a claim for loss of independency when the deceased died in a road accident;

(ix) The Court of Appeal made it clear in its judgment that the non-registration of a marriage will result in it being void by operation of law, when it held as follows:

> [47] The certificate for marriage, licence or statutory declaration referred to in section 22(4) above means a certificate, licence or statutory declaration issued or delivered as the case may be pursuant to the LRA, which *ex necessitate* involves prior registration of the marriage. Without such certificate or licence having been issued or such statutory declaration having been delivered, the purported marriage "shall be void".
>
> …

> [53] In all sympathy to the 3rd appellant, we must say this in our concluding remark. Nothing can take away the fact that she is the lawfully wedded wife of the late Low Chin Wee under Chinese customary marriage but by not registering the marriage under the LRA, it has become void by operation of law.

(x) The Court of Appeal also emphasised in its judgment that statutes other than the LRA are no longer relevant in determining the legal status of a marriage between non-Muslims when it held as follows:

> [40] After the coming into force of the LRA, it is the LRA and not the CLA, the Married Women Act 1957 or any statute of general application, nor any legal doctrine or custom that determines the legal status of a marriage between two non-Muslims. It is therefore in the LRA and not elsewhere that we should look for the answer to the question who is a "wife" under section 7(2) of the CLA.

(xi) Hence, based on the authority of *Tan Siew Sen*, the SSAB erred in law and/or fact in coming to its decision based solely on the two Court of Appeal cases that have since been nullified by the Federal Court;

(xii) It is clear that the position of the law as it stands now is that the non-registration of a customary marriage would render the said marriage void by operation of law;

(xiii) Hence, the respondent cannot be accepted as a wife/widow as the non-registration of her marriage has rendered it void by operation of law and only a valid marriage will make a woman a wife/widow;

(xiv) The SSAB also erred in law and/or fact in interpreting the judgment of the High Court in the case of *Koi Lean Hua v. Ketua Pengarah Pertubuhan Keselamatan Sosial* [2011] 1 LNS 878 [Civil Appeal No. R3-16-01-2011] ("*Koi Lean Hua*") differently from what was decided in that case;

(xv) This is because in that case, the issue also concerns the interpretation of 'widow' in s. 2(3) of the ESSA 1969 and the High Court held as follows:

> But as far as the word 'widow' is concerned, it must have been the intention of the Parliament that it refers to 'lawful widows' only. For there to be a lawful widow, there must be a valid marriage. But in the appellant's case, not only her marriage to the deceased was not a monogamous marriage (the first and second marriage still in existence), but her marriage also was not registered under the LRA. As such, her marriage is not valid and recognised under LRA. In the eyes of the law, the appellant is not recognised as a lawful widow.

(xvi) But in deciding the respondent's appeal, the SSAB overlooked the mandatory requirement of registration of marriage as was clearly stipulated in *Koi Lean Hua* and instead considered the irrelevant question of whether the respondent's marriage to the deceased was monogamous or not; and

(xvii) Therefore, since the respondent's marriage with the deceased was never registered under the LRA, the respondent cannot be classified as a lawful widow to the deceased for purposes of the ESSA 1969.

Respondent's Submissions Before This Court

[25] Ms Manimagalai A/P Gowindasamy ("Ms Manimagalai"), learned counsel for the respondent, submitted that this appeal ought to be dismissed as it has no merits based on the reasons with which I agreed and which I have incorporated in my grounds of judgment.

Decision of Court Dated 16 May 2017

[26] On 16 May 2017, I dismissed this appeal with costs of RM5,000.

[27] Dissatisfied with my decision, the appellant has filed a notice of appeal against my decision to the Court of Appeal.

Reasons For Dismissing Appeal

[28] Below are the reasons why I dismissed the appellant's appeal.

[29] I agreed with the respondent's submissions that this appeal has no merits because the sole issue ought to be decided in the affirmative.

[30] Hence, I decided the sole issue for the determination by the court in the affirmative in favour of the respondent as follows:

(i) The respondent not having her marriage to the deceased registered under the LRA, can be categorised as a "widow" under s. 2(3) of the ESSA 1969 so as to entitle her to be paid a survivors' pension.

The Law On Survivors' Pension

[31] The law concerning survivors' pension is the ESSA 1969. The ESSA 1969, undoubtedly, is a piece of social legislation. In my view, it was enacted by Parliament with the object of providing social security in certain contingencies and to make provisions for certain other matters in relation thereto including looking after the welfare of the dependants of a deceased insured person.

[32] The Preamble of the ESSA 1969 states as follows:

> An act to provide social security in certain contingencies and to make provisions for certain other matters in relation thereto.

[33] Section 15 of the ESSA 1969 defines the benefits which are available under the Act.

[34] In the instant case, s. 15(g) is more relevant as the word "benefit" is defined as follows:

> periodical payments to dependants of an insured person who dies while in receipt of invalidity pension, or of an insured person who has not attained sixty years of age but has completed a full or reduced qualifying period for survivors' pension mentioned in section 17A(2) and (3) (hereinafter referred to as survivors' pension).

[35] Section 15 of the ESSA 1969 defines "survivors' pension" as follows:

> Periodical payments to the dependants of an insured person who dies while in receipt of invalidity pension, or of an insured person who has not attained sixty years of age ... .

[36] Section 20A of the ESSA 1969 provides for the manner of the payment of the "survivors' pension" as follows:

> (1) If an insured person who is in receipt of invalidity pension, or if an insured person who has not attained sixty years of age but has completed a full or reduced qualifying period as specified under section 17A dies, survivors' pension at the rates specified in the Eight Schedule shall be payable:
>
> (a) to the widow or the widower during life, and if there are two are more widows, the widow's share of survivors' pension specified in the Eight Schedule shall be divided equally between the widows: ...

[37] In my view, based on the definition of the word "dependant" in s. 2(3) of the ESSA 1969, it is clear that a dependant includes the widow of the deceased insured person being a relative of a deceased insured person.

[38] Section 2(3) of the ESSA 1969 states as follows:

> Dependant means any of the following relatives of a deceased insured person, namely:
>
> (a) A widow or widower or a child.

[39] It is trite law that the first rule for the interpretation of statutes known as the literal rule states that the words in a statute must be given their ordinary and natural meaning if the meaning is clear and there is no ambiguity upon such interpretation.

[40] In the *Oxford Reference Dictionary*, the word 'wife' is defined as a married woman, especially in relation to her husband. In the *Oxford Reference Dictionary*, the word 'widow' is defined as a woman who has lost her husband by death and not married again.

[41] In the *Black's Law Dictionary*, the word 'wife' is defined as a married woman; a woman who has a lawful spouse living. In the *Black's Law Dictionary*, the word 'widow' is defined as a woman whose husband has died and who has not remarried.

[42] In my view, by virtue of the respondent's valid customary marriage to the deceased and based on the ordinary meanings of the words "wife" and "widow" as reproduced above, the respondent was, undoubtedly the wife of the deceased prior to his demise and, the "widow" of the deceased after the demise of the deceased.

[43] I am of the view that by reading and interpreting the words used by Parliament in s. 2(3) of the ESSA 1969 reproduced earlier, there is no requirement for the respondent to prove that her marriage to the deceased before his demise is a valid marriage solemnised and registered under the LRA.

[44] This is because s. 2(3) of the ESSA 1969 does not refer to a "lawful widow" or a "lawful widower" of a deceased insured person and hence, in my respectful view, there is no justification for the court to insert the word "lawful" in front of the words "widow or widower" in that section. It follows, therefore, that as long as a claimant under the ESSA 1969 can prove that he or she is a widow or widower or a child of a deceased insured person, the claimant is a "dependant" within the meaning of that section.

[45] In the instant case, as the validity of the respondent's customary marriage to the deceased is not disputed and the fact of the deceased's demise is also not disputed, the respondent has proven that she is a widow and it suffices for her claim to be allowed by the DG of SOCSO.

[46] In *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara* [2008] 9 CLJ 428, VT Singham J held that the ESSA 1969 is a social piece of legislation and that it deserves a flexible, liberal and a wider interpretation.

[47] In that case, the learned judge stated as follows:

> [15] The Employees' Social Security Legislation in this jurisdiction is a social piece of legislation. Among others, it provides security to an employee against loss of earnings due to industrial accident and occupational disease. In other words, this social piece of legislation is directly intended to secure the interest and welfare of employees of the industries, factories and other establishment. The concept of social security should be based 'on ideals of human dignity and social justice' and should be given a flexible approach and a liberal interpretation to s. 24 of the Act in order to be consonant with modern social security concept and should not be unduly restrictive in its scope where interpretation is required. In fact, the Insured himself is required to contribute together with his employer on a monthly basis to the Social Security Fund which is managed by SOCSO, and this contribution which is made both by the employer and the Insured should also be considered as akin to 'savings' or 'investment' towards the fund with the view that SOCSO would provide monetary assistance or benefit under the Act to Insured or their dependants in the event of any mishap 'arising out of and in the course of their employment', as in the instant appeal. Under the circumstances, is it fair to find excuses or to create uncertainties to reject

A the claim willy nilly for disablement benefit when at the time monetary assistance of benefit is desperately required by the Insured-victim or in the case of his death, by his dependants for which this Organization was established ie, to provide security if the accident or death 'arises out of and in the course of an Insured's employment'. In other words, if there is no 'employment injury' or death, there will not be any payment or
B benefit under the Act to insured's or their dependants.

[16] It is important to be reminded that this social legislation was introduced to secure social and economic justice to all Insured – employees under this Act who are entitled to claim the benefits with the view to provide a quick and inexpensive remedy for the entitlement of
C such rights for which they are required by the Act to contribute monthly towards the fund in the event of risks of service. In fact, the contribution contemplated by the Act is in the nature of social insurance or security and provides certain contingencies and the contribution received from the employer or the insured is deposited in common fund and managed by SOCSO. The law therefore must respond and be responsible to be felt
D and discernible compulsion of circumstances that would be equitable, fair and act accordingly. (See *Pomal Kanji Govindji v. Verajall Kar Sandas Purohit* [1989] AIR SC 436). Therefore, it is not unreasonable and is a sound rule of construction that the social legislation should be interpreted liberally and be given a purposive interpretation and in such a manner as to render the rights and benefits available under the Act to be effective and
E meaningful or to provide a meaningful social security to Insureds or their dependants and not to "put up all sorts of barricades along the path". Law should keep pace with changing socio economy norms especially if the existing law does not suit the present context or is inadequate. (See *M. C. Mehta v. Union of India* [1987] AIR SC 1088).

F **[48]** In my view, since the ESSA 1969 is a piece of social legislation, which was introduced to secure social and economic justice to all the employees insured under the ESSA 1969, the word "widow" in s. 2(3) of the ESSA 1969 ought to be interpreted literally and purposively in order to serve justice to the insured person in order to enable his relatives who are specified
G under the section to obtain the survivors' pension benefit conferred under the ESSA 1969 in the event of his demise.

The LRA

[49] The LRA on the other hand is a law which deals specifically with the solemnisation and registration of non-Muslims monogamous marriages
H under the Act and their dissolution by way of divorces and the jurisdiction of the High Court in the granting of decrees for the dissolution of the marriages solemnised and registered under the Act and the type of reliefs which the parties to such marriages are entitled to claim upon, *inter alia*, the breakdown or dissolution of such marriages.

I **[50]** The Preamble of the LRA states as follows:

An act to provide for monogamous marriages and solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

[51] The provisions concerning the solemnisation and compulsory registration of marriages under the LRA are reproduced below.

> Section 5(4)
>
> After the appointed date, no marriage under any law religion custom or usage may be solemnised except as provided in Part III.
>
> Section 22(4)
>
> Every marriage purported to be solemnised in Malaysia shall be void unless a certificate for marriage or licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be
>
> Section 27
>
> The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

[52] However, I noted that s. 5(4), s. 22(4) and s. 27 of the LRA, which were heavily relied upon by the appellant in this appeal to attack the decision of the SSAB, only define "marriages" and the solemnisation and registration of such marriages under the LRA.

[53] Since there is no provision or definition in the LRA, which deals specifically with "widow" or "widower", I agreed with the respondent that it would be unjust for the court to rely on the LRA to interpret the words "widow or widower" in the ESSA 1969 to mean "lawful widow or widower" under the LRA.

[54] The appellant's interpretation of the word "widow" to mean "lawful widow" is also contrary to the object of the ESSA 1969.

[55] This is because I am respectfully of the view that Parliament did not intend for ss. 5(4), 22(4) and 27 of the LRA to apply to the ESSA 1969.

[56] My reasons are as follows.

[57] Firstly, the LRA was enacted by Parliament in 1976 which was about seven years after the ESSA 1969 was enacted.

[58] Secondly, in enacting the LRA in 1976, Parliament saw it fit to put in a saving provision in s. 34 and it is trite law that no words of a statute are be construed as superfluous or redundant by the court if the meaning is clear upon such interpretation and there is no ambiguity.

[59] Thirdly, the two Acts have different objects.

[60] Fourthly, in enacting the ESSA 1969, the intention of Parliament is to create a social piece of legislation, which is necessary for the removal of any hardship to the immediate family members of a deceased insured person, who are his relatives being his widow or widows and his children, who have not attained the age of 21 years at the time of his demise.

[61] Fifthly, Parliament did not amend the ESSA 1969 to insert a provision to state that the above three sections of the LRA are applicable to the definition of "dependant" in the ESSA 1969 or that the LRA is applicable to the ESSA 1969.

[62] Sixthly, if Parliament had intended for the above three sections of the LRA to apply to the definition of "dependant" in the ESSA 1969, it could easily have done so instead of leaving it to the courts to interpret and construe the meaning of the word "dependant" in the ESSA 1969 to mean the "widow or widower" of a deceased insured person whose marriage was solemnised and registered under the LRA in the case where the deceased insured person is a non-Muslims.

[63] Seventhly, it was the intention of Parliament for s. 2(3) of the ESSA 1969 to apply independently of ss. 5(4), 22(4) and 27 of the LRA concerning the solemnisation and compulsory registration of marriages under the LRA by virtue of the saving provision in s. 34 of the LRA.

[64] Hence, in my view the real issue before this court is whether the respondent is a "widow" under s. 2(3) of the ESSA 1969 so as to entitle her to a survivors' pension instead of the issue whether the respondent was the lawful wife of the deceased insured person under the LRA so as to deprive her of the benefit of a survivor's pension upon his demise.

[65] Therefore, it follows that the claimant's rights under the ESSA 1969 ought to be determined under the ESSA 1969 and not under the LRA.

The Two Court Of Appeal Decisions, The Federal Court Decision In *Chai Siew Yin*, The Recent Court Of Appeal Decision In *Tan Siew Sen* And The High Court Decision In *Koi Lean Hua*

[66] I am of the respectful view that the two Court of Appeal decisions, the Federal Court decision in *Chai Siew Yin* and the recent Court of Appeal decision in *Tan Siew Sen* can be easily distinguished on facts.

[67] The two Court of Appeal decisions and the recent Court of Appeal decision in *Tan Siew Sen* concern civil claims under the Civil Law Act 1956 (Act 67) ("the CLA") and not SOCSO claims under the ESSA 1969.

[68] The CLA is an Act relating to the civil law to be administered in Malaysia. It must be distinguished from the ESSA 1969.

[69] This is because a deceased insured person under the ESSA 1969 is insured for the benefit of his relatives who are his dependants and who come within the meaning of the word "dependant" in s. 2(3) of the ESSA 1969 so that his relatives can claim for the survivors' pension in order to benefit from the financial contributions which were made by the deceased insured person and his employer prior to his demise as opposed to a claimant under the CLA whose husband did not make such a contribution.

[70] Hence, based on the same reason, the Federal Court decision, which reversed *Chai Siew Yin* is, similarly, distinguishable on facts.

[71] With respect, I disagree with the decision of the High Court in *Koi Lean Hua* based on the reasons which I have given above for deciding the sole issue in this appeal in the affirmative.

Conclusion

[72] Having taken into consideration all the relevant considerations, I was able to conclude that the SSAB did not commit any error of law and/or fact which warranted the intervention of this court to set aside its decision allowing the respondent's claim under the ESSA 1969 for a "survivors' pension".

[73] In the premises, I dismissed the appellant's appeal with costs of RM5,000 subject to the allocator.